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UNCLAS SECTION 01 OF 05 TALLINN 000090

SIPDIS

DEPT FOR EB/TTP/IPE BOGER, FOR EUR/NB GROVES
DEPT PLEASE PASS TO USTR FOR LMOLNAR
DOC FOR ITA/MAC/OIPR CASSIE PETERS
DOC PLEASE PASS USPTO

SIPDIS

E.O. 12958: N/A
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SUBJECT: ESTONIA - VOLUNTARY INPUT FOR 2008 SPECIAL 301

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¶1. (U) Summary: In 2007, the Government of Estonia (GOE) continued to improve the country's IPR regime through legislative changes and cooperation with rights holders. Major changes to IPR legislation were introduced in March, when the Law Amending the Penal Code and Copyright Act came into force. In 2006, the Estonian Parliament ratified the World Phonogram Producers Treaty and the World Copyright Treaty. However, the ratification letters have not been submitted, due to the decision that the European Community should submit the letters simultaneously. While traditional forms of piracy continued to decrease, Internet piracy in tech-savvy Estonia is an ever-growing concern that calls for better training of police, prosecutors and judges. In 2007, the embassy and the American Chamber of Commerce's IPR committee sponsored several events which directly support Embassy Tallinn's FY2009 MSP goal of Promoting Economic Prosperity through IPR education and enforcement. End Summary.

¶A. NOTORIOUS MARKETS

¶2. (U) There are no notorious markets for counterfeited goods in Estonia.

¶B. Optical Media Piracy (CDs, VCDs, DVDs)

¶3. (U) In 2007, optical media piracy in Estonia continued to decline. The days of large-scale trade in pirated materials are long gone. According to Estonia's only anti-piracy NGO, the Estonian Organization for Copyright Protection (EOCP), the physical market for pirated audio-video items has decreased significantly, including the harbor area, which over the past year has been under special police surveillance.

¶C. Use/Procurement of Government Software

¶4. (U) The use of software in government offices is in compliance with national and international copyright standards. According to the GOE Informatics Center, every government office has designated a person/section to be responsible for information systems, including procurement and development of software. The GOE implements rules and regulations for government software procurement.

¶D. TRIPS compliance, FTA Implementation and Other IP-Related Issues

¶ 15. (U) Estonia continues to make progress on promulgating IPR-related legislation. Major changes to were introduced on March 15, when the Law Amending the Penal Code and Copyright Act (LAPCCA) came into force. The LAPCCA classifies trade in pirated copies as a crime even when it occurs for the first time (previously it was only a misdemeanor). Also the maximum penalty for legal persons for violating the Copyright Act was increased from USD 5,000 to USD 50,000. However, according to the LAPPCC the use of pirated copy for a public performance or public display of the work or for communication is a misdemeanor, unless committed for commercial purposes. This classification is posing difficulties for the investigation of IPR crimes in the digital environment - under Estonian legislation, no criminal investigative techniques (such as going undercover and surveillance) may be used when investigating a misdemeanor act.

¶ 16. (U) In November 2007, the Parliament passed Amendments to the Electronic Communication Act (AECA), implementing the EU Data Retention Directive. The AECA will provide the legal basis to acquire user log information from internet service providers and thus contribute to the information exchange and cooperation with law enforcement agencies in the fight against internet piracy. The AECA will come into force on March 15, 2009.

¶ 17. (U) On June 21, 2007 the Cabinet passed a decree to form an IPR Committee under the Ministry of Culture (MOC). The Committee replaced the previous IPR Expert Committee as its five-year term expired. No major changes occurred, as the new Committee is continuously

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chaired by the Media and Copyright Department of the MOC and consists of representatives from the Ministry of Justice, the Estonian Performers' Union, EOCP, Estonian Public Broadcasting, the Ministry of Finance, the Law School of Tartu University, the Estonian Authors' Society, the MOC, the Publishers' Association, the Business Software Alliance and the Estonian Phonogram Producers Association. The role of the Committee is to report to the Cabinet on the IPR situation in Estonia bi-annually and make recommendations how to improve the IPR regime. A new function of the Committee is to serve as an extrajudicial authority for conciliation proceedings on IPR cases.

¶ 18. (U) In 2006, the IPR Expert Committee proposed to draft a new Copyright Act. The current Copyright Act dates from 1992 and has been amended 20 times. The aim of the new Copyright Act is to harmonize the language, restructure the Articles and add new regulations for authors from the Soviet era. However, the drafting of the new law was suspended in 2007, as the GOE still needs to address issues related to protection of works from the Soviet area and orphan works sooner than in the four-year average time for adoption of a complex law such as the Copyright Act.

¶ 19. (U) In 2007, the Ministry of Internal Affairs initiated a Development Plan for Estonian Internal Security, 2009-2013 that our contacts say will also include IPR as a priority. Currently, the basis of the Plan, the Estonian Security Guidelines for 2008-2015, is awaiting Parliament's approval. The guidelines require an upgrade in the capacity of law enforcement authorities to fight against crimes in the digital environment, including IPR violations.

¶ 10. (U) In 2007, two optical disc plants continued production in Estonia: 'Digibox' in Tartu and the

Lithuanian-owned Baltic Optical Disc (BOD) plant in Tallinn. The managers of these companies have declared that their IPR activities fully comply with copyright laws, they work very closely with IPR organizations, and are actively involved in anti-piracy actions. The International Federation of the Phonographic Industry (IFPI) has taken samples of the mold of the CD/DVD lines of both of the plants located in Estonia and provided them with mold Source Identification Codes (SID).

¶11. (U) While Estonia has no legislation mandating the use of SIDs on locally manufactured CDs, BOD and Digibox have each entered civil agreements with the Nordic Copyright Bureau (NCB) on IPR protection. According to the EOCP, such agreements between the IPR organizations and producers have proven to be very effective. As source identification in Estonia is regulated by civil agreements, the GOE does not anticipate making SID provisions mandatory by law. According to the MOC however, the GOE will consider this step if the production situation in Estonia changes.

¶E. DATA PROTECTION

¶12. (U) Estonia's data protection, including undisclosed test data submitted by pharmaceutical companies, is in full compliance with data protection in the European Union. There have been no reports of marketing approvals against unfair commercial use or about marketing approvals granted for generic copies of patent infringing pharmaceutical products.

¶F. PRODUCTION, IMPORT AND EXPORT OF COUNTERFEIT GOODS

¶13. (U) Seizures of CDRs with pirated materials at local shopping centers show that there is some domestic production in Estonia. However, law enforcement agencies as well as anti-piracy groups consider Estonian more a transit country than a source country for counterfeit goods. According to Estonian Customs, most of the IPR-infringing goods that have been detected have been in transit to Russia. Only a small quantity of pirated goods was transported from Russia to the European Union Customs territory via 'suitcase piracy'.

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¶G. ENFORCEMENT

¶14. (U) In 2007, the Estonian Tax and Customs Board detected 91 cases of counterfeit goods, seizing 53,007 items in total. The largest cases involved toys (Marvel Comics characters, Legos, Shell Brands International, etc.) in which authorities seized some 13,688 items. Also, spare parts for cellular telephones form another big category in Estonian Customs' fight against IPR infringement. In 2007, they seized 9,658 of these items. However, our contacts say that rights holders rarely initiate legal proceedings in cases where only small quantities of their own goods are detected, as industry considers the proceedings too time consuming relative to the perceived benefit of pursuing them.

¶15. (U) Industry representatives, particularly the ones located in Estonia have not been active submitting annual applications to Customs which allow Customs to seize suspected pirated goods on their behalf. (Note: These applications are required in accordance with European Council Decision EC1383/2003 of July 2003. End Note) To date, industry has submitted roughly 450 applications, the vast majority of which come from trademark representatives. Most of these applications

are valid throughout the entire EU, and are submitted outside Estonia. All applications submitted by the EOCP, which represents the music and film industry, have expired. The Business Software Alliance has not submitted a single application. Without such applications, Customs can make ex-officio seizures of suspected goods for a maximum of three days, which is generally an insufficient time to determine whether the goods are pirated.

¶16. (U) In 2007, 20 officers of the Central Criminal Police were investigating solely IPR crimes, initiating 66 criminal cases and 12 misdemeanor cases. They organized 14 raids in cooperation with EOCP. In one April 2007 instance, a raid of a private apartment netted a seizure of more than 1,000 pirated PS2 CD/DVDs from a person offering Sony PlayStation 2 'mod-chipping' services through magazines and websites. In addition to police raids, the EOCP carried out 145 control visits to video and music shops and shopping centers. While no legal action can be taken on the site without the police, these raids serve well as preventive measures. In total in 2007, the EOCP gave expert opinions on 10,051 different audio-video media carriers, mostly seized by the police and Customs. However, according to our police contacts, the reduction in seizures of pirated audio-video materials is due to falling demand on the local market. Customers who seek pirated materials consider the prices too high, when they can often get the same products over the internet for free.

¶17. (U) The biggest problem in IPR enforcement is the lack of IP expertise in the Estonian prosecutor's office, which has made it a low priority issue. According to the EOCP, most criminal cases involving copyright infringements are terminated by the public prosecutors on the basis of lack of public interest in proceedings, and negligible guilt. Also, our police contacts find investigation of IPR discouraging, as so many cases are dropped by the prosecutors. Furthermore, most judges lack IPR practice as few cases ever come before the courts. In November 2007, however, a Harju County Court convicted a private person for reproducing (uploading) a pirated copy of the Estonian movie 'Klass' to a public server. (Note: In 2007, this movie won several awards at film festivals in Europe. End note.) The court ordered the defendant to pay USD \$1,300 in compensation to the state. This is Estonia's first criminal sentence for uploading pirated material to a public File Transfer Protocol (FTP) server. IPR NGOs have high hopes that this case may act as a precedent.

¶H. TREATIES

¶18. (U) In 2006, the Estonian Parliament ratified the two WIPO treaties pending since Estonia's accession to the EU: the World Phonogram Producers Treaty (WPPT) and the World Copy Rights Treaty (WCT). However, according to a March 2000 decision, WPPT and WCT ratification

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letters from member states and the European Community should be submitted simultaneously. Our contacts in MOC tell us that four EU member states have still not ratified these treaties, and currently there is no time frame when all ratification letters can be submitted.

¶I. INTERNET PIRACY AND COOPERATION WITH RIGHTS HOLDERS

¶19. (U) In 2007, the Internet continued to be the biggest IPR challenge in Estonia, as in other countries with well-developed IT sectors. While optical media piracy has shown a vast decline in recent years, the Internet has become the most active outlet for pirated

material in Estonia, especially the FTP servers and peer-to-peer (P2P) systems. The EOCP has concluded a memorandum of understanding (MOU) with ten major Internet Service Providers (ISPs) calling for the removal of illegal copyright materials from public FTP servers. Still, there are small ISPs that offer their servers to swap music, films and software. In April 2007, the EOCP and two major ISPs in Estonia (Netpoint Systems and Elisa Eesti) concluded cooperation agreements. The aim of these agreements is to anticipate and prevent infringement of copyrights and the rights related thereto on the Internet. The agreements provide procedures for notice and takedown of piracy websites and FTP servers, allowing better control of large-scale FTP piracy in Estonia. In 2007, the EOCP closed down 422 web sites and removed 155,906 copyright-infringing files. Also in 2007, EOCP issued 39 warnings to hand-to-hand distributors that offer pirated copies through on-line magazines. However, most of the music files were in foreign servers. File sharing and P2P networks such as KaZaA, StreamCast, E-Donkey, E-Mule, and BitTorrent remain the largest source of Internet piracy in Estonia. These networks are all located geographically outside of Estonia.

¶20. (U) In 2007, Estonian telecom companies Elion and EMT opened a digital music store, which contains four million songs from 12,000 labels all over the world, including Universal, SonyBMG, EMI and Warner. Users can download a single track or the whole album, and price varies from \$1.70 to \$2.50 per piece. The music store is available at EMT SurfPort and via the Internet at Elion's web portal <http://muusika.hot.ee>. Another network for legal downloads was set up by Estonian music producers at <http://muusika24.ee>.

¶J. POST'S ACTIVITIES

¶21. (U) Intellectual Property Rights protection remains a priority for Embassy Tallinn. Post regularly uses all means available to help Estonia to improve its IPR regime. On several occasions the Embassy has lobbied the GOE to continue to upgrade its IPR regime. In 2007, we sent a Senior District Prosecutor on an International Visitors Leadership Program (IVLP) on Protection of Intellectual Property Rights.

¶22. (U) In 2007, two police officers, a Customs officer and a prosecutor attended courses at the U.S. Patent and Trademark Office's (USPTO) Global Intellectual Property Academy (GIPA). The Estonian participants told us they valued all of these trainings highly, and they contributed to IPR law enforcement activities in Estonia. These activities directly supported Embassy Tallinn's FY2009 MSP goal of Promoting Economic Prosperity through IPR education and enforcement.

¶23. (U) On January 17-18, 2007, Embassy Tallinn and the USPTO held a workshop focusing on copyright infringement in the digital environment. The event was a rare coming together of 60 Estonian police, prosecutors, judges, government officials, law professors and industry representatives. The group discussed enforcement problems resulting from limits on investigative tools, the prosecutorial practice of dropping cases for lack of 'public interest', and the small size of the market. Panelists shared valuable best practices and collaborated on techniques for pursuing Internet-based IPR criminals. The event received wide media coverage in local TV and press, and accomplished its goal of raising IPR awareness. (Ref B)

¶24. In 2006, on the basis of an embassy initiative, the American Chamber of Commerce in Estonia (AmCham) established an IPR Sub-Committee. In 2007, in order to raise public awareness and promote IPR education, this committee hosted two seminars: one for teachers and one for small and medium businesses. The seminar for teachers clearly demonstrated that there is a real need for IPR education in schools, something AmCham is now working to achieve. The committee continues its work on IPR in schools, with embassy support. On February 6, 2008, the AmCham IPR Committee hosted a roundtable at the embassy titled 'How to raise IPR awareness in Schools' (Ref C). The next IPR seminar for teachers will take place in April, when two U.S speakers will provide IPR training for Estonian teachers.

PHILLIPS